



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2004

Mr. Billy G. Paige
Countryside Village Homeowners Association
c/o Principal Management Group of Houston
11000 Corporate Centre Drive, Suite 150
Houston, Texas 77041

OR2004-8192

Dear Mr. Paige:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 210553.

The Countryside Homeowners Association, Inc. (the "Association") received a request for information. You assert that the Association is not a governmental body subject to the Act.

The Act generally makes public the records of governmental bodies. Gov't Code §§ 552.001, .003, .021, .221. The Act defines "governmental body" in pertinent part as

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Id. § 552.003(1)(A)(xii). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. See *Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.—Waco 1998, pet. denied). In Attorney General Opinion JM-821 (1987), this office concluded that "the primary issue in determining whether certain private entities are governmental bodies under the Act is whether they are supported in whole or in part by public funds or whether they expend public funds." Attorney General Opinion JM-821

at 2 (1987). Thus, the Association would be considered a governmental body subject to the Act if it spends or is supported in whole or in part by public funds.

You informed us by telephone that the Association does not spend or receive public funds. Consequently, based upon your representation, we find that the Association is not a governmental body under section 552.002 of the Act. *See* Gov't Code § 552.002(a).

Section 552.0036 of the Government Code makes certain property owners' associations subject to the Act. *See* Gov't Code § 552.0036. The provision, which sets out three criteria for subjecting a property owners' association to the Act, reads as follows:

A property owners' association is subject to this chapter in the same manner as a governmental body if:

- (1) membership in the property owners' association is mandatory for owners or for a defined class of owners of private real property in a defined geographic area in a county with a population of 2.8 million or more or in a county adjacent to a county with a population of 2.8 million or more;
- (2) the property owners' association has the power to make mandatory special assessments for capital improvements or mandatory regular assessments; and
- (3) the amount of the mandatory special or regular assessments is or has ever been based in whole or in part on the value at which the state or a local governmental body assesses the property for purposes of ad valorem taxation under Section 20, Article VIII, Texas Constitution.

Id. Although you did not state whether the Association meets the first criteria, and we understand you to represent that the Association meets the second criteria, you informed us by phone that the amount of the Association's mandatory special or regular assessments is based on expenses only. Thus, we understand you to represent that the Association does not meet the third criteria in section 552.0036. Consequently, we find that the Association is not subject to the Act under section 552.0036.

In summary, as we find that the Association is not subject to the Act under section 552.002 or section 552.036, the Act does not require the Association to respond to the request for information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 210553

Enc: Submitted documents

c: Ms. Sue Daniel
1849 Country Village Boulevard
Humble, Texas 77338
(w/o enclosures)